

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1562 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NAROTTAMBHAI JITUBHAI

PURABIA

Versus

STATE OF GUJARAT

Appearance:

MR MUKUL SINHA for Petitioners

Ms. S.D.Talati, Asstt.GP for Respondent No. 1

SERVED for Respondent No. 2, 4

MR DA BAMBHANIA for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/02/98

ORAL JUDGEMENT

The short questions that arise in this petition are whether the petitioners have a right to absorption on regular permanent posts in the office of the respondent No. 2 authority and whether the petitioners had a right to be considered for appointment to such posts.

2. Under order dated 20th November, 1988, the petitioners herein and one another were appointed as part time sweepers in the office of the respondent No. 2. Under the said order, the petitioners were appointed on a temporary basis for three hours daily till regular employment was made. It appears that the said part time employment continued for more than three years. On 3rd January, 1992, the terms of appointment were modified and the petitioner and the third person were appointed as part time employees for six hours daily till the regular employment was made. The petitioners were paid consolidated salary of Rs. 600/- p.m. It appears that on 7th March, 1992, the petitioners were informed that they need not report for duty from the next date i.e. from 8th March, 1992. Feeling aggrieved, the petitioners have preferred this petition.

3. Mr. Sinha, the learned advocate appearing for the petitioners has relied upon the Government Circular dated 26th December, 1980 (page 21) and has submitted that whatever be the regular vacancy, the petitioners had prior right to be absorbed on such vacancy. In the alternative, he has submitted that even if it is assumed that the petitioners had no right to absorption, at least the petitioners could have been given a chance of being considered for regular appointment alongwith other candidates who were considered for such employment. He has further submitted that the employment was required to be made for the State of Gujarat and all the eligible persons should have been given chance for being considered. In the present case, such consideration has been restricted to the persons sponsored by the Employment Exchange Office, Ahmedabad District. Said recruitment is, therefore, arbitrary and the petitioners should be given chance of being considered for such employment. He has relied upon the judgment of this court in the matter of Vipul S. Baxi and another v. State of Gujarat and others (1988 (1) GLH 34). Ms. Talati, the learned Asstt. G.P. has appeared for the respondents and has submitted that the petitioners' appointment was conditional and had no right to appointment and/or absorption in the regular establishment.

On perusal of the appointment order issued in favour of the petitioners, it is evident that the petitioners were appointed as part time sweepers for three hours daily on condition that such employment shall continue till regular appointment is made. It is, therefore, apparent and even Mr. Sinha concedes that the appointment was made without following any procedure i.e.

to say neither the names of eligible candidates were called for from the employment exchange office nor the petitioners were subjected to any competitive test. In my view, said appointment did not confer any right to employment upon the petitioners. Upon the candidates regularly recruited being made available, respondent No. 3 was duty bound to discharge the petitioners from service. It is borne out from the counter-affidavit that some time in the month of December, 1990, requisition was made to the Employment Exchange Office and certain names were sponsored by the Employment Exchange Office. After holding the interviews, three persons were selected for the post of sweeper while seven persons were selected for the post of peon and the appointment orders were issued in their favour on 30th April, 1992. Thus, regularly recruited employees being made available, the petitioners had no right to continue in the employment of the respondents. The circular dated 26th December, 1980 relied upon by Mr. Sinha does refer to absorption of the part time employees on regular establishment by following the prescribed recruitment rules and procedure. In my view, there is nothing in the said circular which should entitle the part time employee to absorption on regular vacancy irrespective of the recruitment rules and procedure prescribed. Said circular does not confer any right to employment/absorption upon the petitioners.

4. It is evident that the regular employment of the peons and sweepers was made on 30th April, 1992 and they were posted in various offices in Ahmedabad. It is obvious that the said recruitment was made for the office situated at Ahmedabad and it is just, fair and equitable that the respondents should call for the names of the suitable candidates from the Employment Exchange Office at Ahmedabad alone. Ordinarily, employment in Class-IV service is required to be made locally and the names of suitable persons need not be called for from all the employment exchange offices situated in various districts of the State. It is well known that the employment exchange office is required to recommend the names of the suitable persons in order of their registration. The persons whose names are registered earlier have a prior right to be recommended by the employment exchange office. In the present case, it is not established that the petitioners' names were not sponsored by the employment exchange office though they were duly registered alongwith or earlier than the persons whose names were sponsored by the employment exchange office. In the matter of Vipul Baxi and another (supra), the petitioners were serving for nearly five to six years. The Court found that their names were not sponsored by

the employment exchange office for some irregularity committed by certain officers. The Court, therefore, directed that the petitioners should not be made to suffer. In the present case, I do not find any irregularity having been committed by any of the officers of the respondents. Further, it is not even alleged that the employment exchange office committed an irregularity in not recommending the names of the petitioners. In fact, petitioner No. 2 herein is not even registered with the Ahmedabad District Employment Exchange Office.

5. It appears to me to be just and equitable that alongwith the persons recommended by the employment exchange office, existing employees who are serving on temporary basis should also be given chance to compete with the others and they should be called for interview or any other competitive test. In the present case, however, it is not demonstrated or even averred that the petitioners were appointed on temporary basis after following due procedure. Even temporary appointment in the public offices is required to be made after following due procedure and if such appointment is made after following due procedure, such temporary employee shall have a right to compete for regular employment. In the present case, it is not disputed that the petitioners were given part time employment without following due procedure. In that view of the matter, the petitioners cannot claim right to regular employment alongwith other persons sponsored by the employment exchange office.

6. In view of the above discussion, petition is dismissed. Rule is discharged. There shall be no order as to costs.

Vyas